

# House File 677 - Introduced

HOUSE FILE 677

BY COMMITTEE ON ENVIRONMENTAL  
PROTECTION

(SUCCESSOR TO HSB 81)

## A BILL FOR

1 An Act relating to administrative procedures within the  
2 department of natural resources.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

DIVISION I

ADMINISTRATIVE APPEALS TIMELINE

Section 1. NEW SECTION. 455B.110 Administrative appeal orders — deadline.

1. An order issued by the director or the department pursuant to authority granted in this chapter may be appealed, resulting in the scheduling of a contested case hearing as provided for in chapter 17A. The appeal must be received by the director within the applicable timeframe established in this section. If the appeal is not received within the applicable timeframe, the appeal is not timely and the order is final agency action.

2. For a person that holds a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the address of the person identified in the permit and the address of the responsible party listed in the permit, if any.

3. For a person that is required to maintain a registered agent or a registered office in the state and does not hold a permit issued by the department, an appeal must be received by the director within sixty days of the issuance of the order to the official registered agent address on file with the secretary of state.

4. For any other person, an appeal must be received by the director within sixty days of issuance to the last known address.

5. The director or the department shall provide a copy of the order by ordinary mail or electronic mail to the person's attorney if the attorney has been identified to the department as representing the person.

6. *a.* For the purposes of this section, the date of issuance of an order by the director or the department is the postmarked date that the order is sent by the department to the registered agent or person.

*b.* For the purposes of this section, the date of receipt by

1 the director is the postmarked date that the appeal was sent  
2 to the director or the date the appeal was hand-delivered and  
3 filed and stamped by the department during its regular business  
4 hours.

5 Sec. 2. Section 455B.138, subsection 1, Code 2019, is  
6 amended to read as follows:

7 1. When the director has evidence that a violation of  
8 any provision of division II of this chapter or chapter 459,  
9 subchapter II, or rule, standard or permit established or  
10 issued under division II or chapter 459, subchapter II, has  
11 occurred, the director shall notify the alleged violator and,  
12 by informal negotiation, attempt to resolve the problem.  
13 If the negotiations fail to resolve the problem within a  
14 reasonable period of time, the director shall issue an order  
15 directing the violator to prevent, abate or control the  
16 emissions or air pollution involved. The order shall prescribe  
17 the date by which the violation shall cease and may prescribe  
18 timetables for necessary action to prevent, abate or control  
19 the emissions of air pollution. The order may be appealed to  
20 the commission. The applicable timeframes for the issuance and  
21 appeal of the order are defined in section 455B.110.

22 Sec. 3. Section 455B.175, subsection 1, paragraph a, Code  
23 2019, is amended to read as follows:

24 a. The director may issue an order directing the person  
25 to desist in the practice which constitutes the violation or  
26 to take such corrective action as may be necessary to ensure  
27 that the violation will cease. The person to whom such order  
28 is issued may cause to be commenced a contested case within  
29 the meaning of the Iowa administrative procedure Act, chapter  
30 17A, by filing with the director ~~within thirty days~~ a notice  
31 of appeal to the commission. The applicable timeframes for  
32 the issuance and appeal of the order are defined in section  
33 455B.110. On appeal the commission may affirm, modify or  
34 vacate the order of the director; or

35 Sec. 4. Section 455B.279, subsection 1, Code 2019, is

1 amended to read as follows:

2 1. The director may issue any order necessary to secure  
3 compliance with or prevent a violation of this part or the  
4 rules adopted pursuant to this part. ~~Within thirty days of~~  
5 ~~issuance, the~~ The order may be appealed to the commission by  
6 filing a notice of appeal with the director. The appeal shall  
7 be conducted as a contested case pursuant to [chapter 17A](#) and  
8 the commission may affirm, modify, or revoke the order. The  
9 department may request legal services as required from the  
10 attorney general, including any legal proceeding necessary to  
11 obtain compliance with this part and rules and orders issued  
12 under this part. The applicable timeframes for the issuance  
13 and appeal of an order are defined in section 455B.110.

14 Sec. 5. Section 455B.308, Code 2019, is amended to read as  
15 follows:

16 **455B.308 Appeal from order.**

17 Any person aggrieved by an order of the director may appeal  
18 the order by filing a written notice of appeal with the  
19 director ~~within thirty days of the issuance of the order in~~  
20 accordance with section 455B.110. The director shall schedule  
21 a hearing for the purpose of hearing the arguments of the  
22 aggrieved person within thirty days of the filing of the notice  
23 of appeal. The hearing may be held before the commission  
24 or its designee. A complete record shall be made of the  
25 proceedings. The director shall issue the findings in writing  
26 to the aggrieved person within thirty days of the conclusion  
27 of the hearing. Judicial review may be sought of actions  
28 of the commission in accordance with the terms of the Iowa  
29 administrative procedure Act, [chapter 17A](#). Notwithstanding the  
30 terms of the Act, petitions for judicial review may be filed  
31 in the district court of the county where the acts in issue  
32 occurred.

33 Sec. 6. Section 455B.476, subsection 1, Code 2019, is  
34 amended to read as follows:

35 1. If there is substantial evidence that a person has

1 violated or is violating a provision of this part or a  
2 rule adopted under this part the director may issue an  
3 order directing the person to desist in the practice which  
4 constitutes the violation, and to take corrective action as  
5 necessary to ensure that the violation will cease, and may  
6 impose appropriate administrative penalties pursuant to section  
7 455B.109. The person to whom the order is issued may appeal  
8 the order to the commission as provided in [chapter 17A](#). On  
9 appeal, the commission may affirm, modify or vacate the order  
10 of the director. The applicable timeframes for the issuance  
11 and appeal of the order are defined in section 455B.110.

12 Sec. 7. Section 455D.23, Code 2019, is amended to read as  
13 follows:

14 **455D.23 Administrative enforcement — compliance orders.**

15 The director may issue any order necessary to secure  
16 compliance with or prevent a violation of the provisions of  
17 this chapter or any rule adopted or permit or order issued  
18 pursuant to [this chapter](#). Any order issued to enforce section  
19 455D.4A may include a requirement to remove and properly  
20 dispose of materials being accumulated speculatively from a  
21 property and impose costs and penalties as determined by the  
22 department by rule. The person to whom such compliance order  
23 is issued may cause to be commenced a contested case within the  
24 meaning of [chapter 17A](#) by filing ~~within thirty days~~ a notice  
25 of appeal to the commission. On appeal, the commission may  
26 affirm, modify, or vacate the order of the director. The  
27 applicable timeframes for the issuance and appeal of the order  
28 are defined in section 455B.110.

29 Sec. 8. Section 458A.11, subsection 2, Code 2019, is amended  
30 to read as follows:

31 2. An order or amendment of an order, except in an  
32 emergency, shall not be made by the department without a  
33 public hearing upon at least ten days' notice. The public  
34 hearing shall be held at the time and place prescribed by the  
35 department, and any interested person is entitled to be heard.

1 The applicable timeframes for the issuance and appeal of the  
2 order are defined in section 455B.110.

3 DIVISION II

4 ADMINISTRATIVE CHANGES FOR WASTE DISPOSAL SYSTEMS AND PUBLIC  
5 WATER SUPPLY SYSTEMS

6 Sec. 9. Section 455B.183, subsection 1, paragraph c, Code  
7 2019, is amended to read as follows:

8 c. The operation of any waste disposal system or public  
9 water supply system or any part of or extension or addition  
10 to the system. This ~~provision~~ paragraph does not apply to a  
11 pretreatment system, the effluent of which is to be discharged  
12 directly to another disposal system for final treatment and  
13 disposal; a semipublic sewage disposal system, the construction  
14 of which has been approved by the department and ~~which that~~  
15 does not discharge into a water of the state; or a private  
16 sewage disposal system ~~which that~~ does not discharge into  
17 a water of the state. The commission may adopt additional  
18 exemptions for a class of disposal systems that do not  
19 discharge into a water of the state or the director may waive  
20 the permit requirement for an individual system that does  
21 not discharge into a water of the state. The commission or  
22 director shall consider the volume, location, frequency, and  
23 nature of disposal from a system or class of systems before  
24 granting a waiver or exemption. Sludge from a semipublic  
25 or private sewage disposal system shall be disposed of in  
26 accordance with the rules adopted by the department pursuant to  
27 chapter 17A. ~~The exemption of this paragraph shall not apply~~  
28 ~~to any industrial waste discharges.~~

29 Sec. 10. Section 455B.183, Code 2019, is amended by adding  
30 the following new subsection:

31 NEW SUBSECTION. 9. A rural water association organized  
32 under chapter 357A or chapter 504 that employs or retains  
33 a licensed engineer shall be considered to have met the  
34 permitting requirements of this section for the purposes  
35 of sewer extensions and water supply distribution system

1 extensions. The department shall not disqualify a rural  
2 water system if the system's hydraulic modeling complies with  
3 standards for water supply distribution systems adopted by the  
4 commission pursuant to this chapter.

5 Sec. 11. Section 455B.265, subsection 6, paragraphs a and c,  
6 Code 2019, are amended to read as follows:

7 a. The amount of a fee shall be based on the department's  
8 reasonable cost of reviewing applications, issuing permits,  
9 ensuring compliance with the terms of the permits, and  
10 resolving water interference complaints. The commission shall  
11 calculate the fees to produce total revenues of not more than  
12 five hundred thousand dollars for each fiscal year, ~~commencing~~  
13 ~~with the fiscal year beginning July 1, 2009, and ending June~~  
14 ~~30, 2010.~~

15 c. The commission shall annually review the amount of moneys  
16 generated by the fees, the balance in the water use permit  
17 fund, and the anticipated expenses for the succeeding fiscal  
18 year years.

19 EXPLANATION

20 The inclusion of this explanation does not constitute agreement with  
21 the explanation's substance by the members of the general assembly.

22 This bill affects administrative procedures within the  
23 department of natural resources.

24 Division I of the bill creates a 60-day period during which  
25 an entity may appeal an order issued by the director or the  
26 department pursuant to the department's authority in Code  
27 chapter 455B. The start of the 60-day period is contingent  
28 on what type of entity seeks an appeal. Division I makes  
29 conforming changes throughout Code chapter 455B. The issuance  
30 and appeal of an order pursuant to Code chapters 455D (waste  
31 volume reduction and recycling) and 458A (oil, gas, and other  
32 minerals) also conform to the new 60-day period.

33 Division II of the bill allows the department to exempt from  
34 permit requirements a class of waste disposal systems that do  
35 not discharge into water of the state and are not currently

1 exempt. Division II also allows the director of the department  
2 to waive the permit requirement of an individual system that  
3 does not discharge into a water of the state. To issue such an  
4 exemption or waiver, the environmental protection commission  
5 or the director must first consider the volume, location,  
6 frequency, and nature of the system or class of systems.  
7 Division II provides that a rural water association organized  
8 under Code chapter 357A or 504 shall be considered to have met  
9 permitting requirements for sewer extensions and water supply  
10 distribution systems if the rural water association employs or  
11 retains a licensed engineer.